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BY \_\_\_\_\_

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DORIS HERNANDEZ, On Behalf of  
Herself and All Others Similarly Situated,

Plaintiff,

v.

MERCK & CO., INC., a Delaware  
corporation, MSD CONSUMER CARE  
INC., a Delaware corporation, MERCK  
SHARP & DOHME CORP., a New Jersey  
corporation

Defendants.

Case No.

**CV 12-8100** -PA  
(JEMx)

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF THE UNFAIR  
COMPETITION LAW, Business and  
Professions Code §17200 *et seq.*;
2. VIOLATION OF THE CONSUMERS  
LEGAL REMEDIES ACT,  
*et seq.*; and
3. BREACH OF EXPRESS  
WARRANTY.

DEMAND FOR JURY TRIAL

1 Plaintiff Doris Hernandez brings this action on behalf of herself and all others  
 2 similarly situated against Defendants Merck & Co., Inc., MSD Consumer Care, Inc. and  
 3 Merck Sharp & Dohme Corp. (collectively, "Merck" or "Defendants") and states:

#### 4 NATURE OF ACTION

5 1. Merck distributes, markets and sells several over-the-counter sunscreen  
 6 products: 16 products with a SPF of 55, 70+, 75+, 80 or 100+ (the "Coppertone SPF 55-  
 7 100+ collection" or "the Products")<sup>1</sup> and several products with a SPF of 50 ("the  
 8 Coppertone SPF 50 Products").<sup>2</sup> With the notable exception of the SPF value, the  
 9 Coppertone SPF 55-100+ collection and the Coppertone SPF 50 Products make virtually  
 10 identical representations and contain virtually identical active ingredients. The Coppertone  
 11 SPF 55-100+ collection retails for a premium over comparable lower SPF products,  
 12 including the Coppertone SPF 50 Products.

13 2. Developed over 30 years, the Sun Protection Factor ("SPF") is the most  
 14 accepted method for evaluating the photo-protective efficacy of sunscreens, being  
 15 universally considered as the main information in the labeling of sunscreens. The SPF

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16  
 17 <sup>1</sup>  
 18 The Coppertone SPF 55-100+ collection includes: (1) Coppertone SPORT Continuous Spray SPF  
 19 100+ Sunscreen; (2) Coppertone SPORT Continuous Spray SPF 70+ Sunscreen; (3) Coppertone  
 20 SPORT SPF 100+ Sunscreen Lotion; (4) Coppertone SPORT SPF 80 Sunscreen Lotion; (5)  
 21 Coppertone SPORT Stick SPF 55 Sunscreen; (6) Coppertone ultraGuard Continuous Spray SPF  
 22 70+ Sunscreen; (7) Coppertone ultraGuard SPF 100+ Sunscreen Lotion; (8) Coppertone  
 23 ultraGuard SPF 70+ Sunscreen Lotion; (9) Coppertone Oil Free SPF 75 Foaming Lotion; (10)  
 24 Coppertone Water BABIES SPF 100+ Sunscreen Lotion; (11) Coppertone Water BABIES SPF  
 25 70+ Sunscreen Lotion; (12) Coppertone Water BABIES Foaming Lotion SPF 75 Sunscreen; (13)  
 26 Coppertone Water BABIES Stick SPF 55 Sunscreen; (14) Coppertone KIDS Continuous Spray  
 27 SPF 70+ Sunscreen; (15) Coppertone KIDS SPF 70+ Sunscreen Lotion; and (16) Coppertone  
 28 KIDS Stick SPF 55 Sunscreen. Plaintiff reserves the right to include other products upon  
 completion of discovery.

<sup>2</sup> The Coppertone SPF 50 Products include, but are not limited to: (1) Coppertone SPORT PRO  
 Series with DuraFlex Continuous Spray SPF 50 Sunscreen; (2) Coppertone SPORT Continuous  
 Spray SPF 50 Sunscreen; (3) Coppertone SPORT SPF 50 Sunscreen Lotion; (4) Coppertone  
 ultraGUARD Continuous Spray SPF 50 Sunscreen; (5) Coppertone ultraGUARD SPF 50  
 Sunscreen Lotion; (6) Coppertone Sensitive Skin Faces Lotion SPF 50 Sunscreen; (7) Coppertone  
 Sensitive Skin SPF 50 Sunscreen Lotion; (8) Coppertone Water BABIES Pure & Simple Lotion  
 SPF 50 Sunscreen; (9) Coppertone Water BABIES Lotion Spray SPF 50 Sunscreen; (10)  
 Coppertone Water BABIES SPF 50 Sunscreen Lotion; (11) Coppertone KIDS Tear Free Lotion  
 SPF 50 Sunscreen; and (12) Coppertone KIDS Continuous Spray SPF 50 Sunscreen.

1 value indicates the level of sunburn protection provided by the sunscreen product. All  
2 sunscreens must be tested according to a SPF test procedure. The test measures the  
3 amount of ultraviolet (UV) radiation exposure it takes to cause sunburn when a person is  
4 using a sunscreen in comparison to how much UV exposure it takes to cause a sunburn  
5 when they do not use a sunscreen. The product is then labeled with the appropriate SPF  
6 value indicating the amount of sunburn protection provided by the product. Because SPF  
7 values are determined from a test that measures protection against sunburn caused by  
8 ultraviolet B (UVB) radiation, SPF values only indicate a sunscreen's UVB protection.

9 3. Consumers have become familiar with SPF values because SPF values have  
10 appeared on sunscreen product labels for many decades. Consumers have learned to  
11 associate higher SPF values with greater sun protection. Consumers reasonably assume,  
12 for example, that a product with a SPF of 100+ (like Coppertone SPORT Continuous  
13 Spray SPF 100+ Sunscreen) provides twice the UVB protection of a sunscreen product  
14 with a SPF of 50 (like Coppertone SPORT Continuous Spray SPF 50 Sunscreen). It does  
15 not. In fact, none of the sunscreen products in the Coppertone SPF 55-100+ collection  
16 provide any additional clinical benefit over the Coppertone SPF 50 Products. According  
17 to the FDA, who has been examining maximum SPF values since 1978, sunscreen  
18 products with SPF values over 50 do not provide any increase in clinical benefit over SPF  
19 50 sunscreen products. The FDA's findings are based on, *inter alia*, scientific tests that  
20 demonstrate SPF 100 sunscreens block 99 percent of UV rays, while SPF 50 sunscreens  
21 block 98 percent – an immaterial difference that provides no additional clinical benefit to  
22 consumers against sunburn.

23 4. Merck's SPF 55, 70+, 75+, 80 or 100+ representations (the "superior UVB  
24 protection claims") on its Coppertone SPF 55-100+ collection are false, misleading, and  
25 reasonably likely to deceive the public. Indeed, the FDA has expressed "concern[ ] that  
26 labeling a product with a specific SPF value higher than 50 would be misleading to the  
27  
28

1 consumer.” 76 Fed. Reg. 35672, 35674.<sup>3</sup> “[T]he agency is concerned that an average  
2 sunscreen consumer may ascribe more to high SPF values than is clinically relevant and  
3 that such products may further encourage the use of sunscreens as a safe way to prolong  
4 exposure.” 65 Fed. Reg. 36319.

5 5. Merck has employed numerous methods to convey its uniform, deceptive  
6 superior UVB protection claims to consumers, including advertising inserts, the internet  
7 and, importantly, on the Coppertone SPF 55-100+ collection labels where they cannot be  
8 missed by consumers.

9 6. The only reason a consumer would purchase a Product from the premium  
10 priced Coppertone SPF 55-100+ collection instead of less expensive, lower SPF value but  
11 otherwise comparable sunscreen products, including the Coppertone SPF 50 Products, is  
12 to obtain a sunscreen product with a proportionally greater sunburn (i.e., UV radiation)  
13 protection, which the Coppertone SPF 55-100+ collection does not provide.

14 7. As a result of Merck’s superior UVB protection claims, consumers –  
15 including Plaintiff and members of the proposed Class – have purchased Products that do  
16 not perform as advertised.

17 8. Plaintiff brings this action on behalf of herself and other similarly situated  
18 consumers who have purchased Products in the Coppertone SPF 55-100+ collection to  
19 halt the dissemination of this false, misleading and deceptive advertising message, correct  
20 the false and misleading perception it has created in the minds of consumers, and obtain  
21 redress for those who have purchased these Products. Based on violations of state unfair  
22 competition laws and Merck’s breach of express warranty, Plaintiff seeks injunctive and  
23 monetary relief for consumers who purchased Products in the Coppertone SPF 55-100+  
24 collection.

25  
26  
27 <sup>3</sup> The FDA has proposed a rule that would cap SPF values at “50+”. 76 Fed. Reg. 35672.  
28

## JURISDICTION AND VENUE

9. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which there are in excess of 100 class members and many members of the Class are citizens of a state different from Defendants.

10. This Court has personal jurisdiction over Defendants because Defendants are authorized to conduct and do conduct business in California. Defendants have marketed, promoted, distributed, and sold the Coppertone SPF 55-100+ collection in California and Defendants have sufficient minimum contacts with this State and/or sufficiently avail themselves of the markets in this State through their promotion, sales, distribution and marketing within this State to render the exercise of jurisdiction by this Court permissible.

11. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred while she resided in this judicial district. Venue is also proper under 18 U.S.C. §1965(a) because Defendants transact substantial business in this District.

## PARTIES

12. Plaintiff Doris Hernandez resides in Burbank, California. In or around May 2012, Plaintiff was exposed to and saw Merck's superior UVB protection claims by reading the Coppertone SPORT SPF 100+ Sunscreen Lotion label. In reliance on the superior UVB protection claim, Plaintiff purchased Coppertone SPORT SPF 100+ Sunscreen Lotion at a Target in North Hollywood, California. She paid approximately \$12.00 for the Product. The Coppertone SPORT SPF 100+ Sunscreen Lotion Plaintiff purchased did not provide proportionally greater sunburn protection as represented. As a result, Plaintiff suffered injury in fact and lost money. Had Plaintiff known the truth about Merck's misrepresentations and omissions, she would not have purchased the Coppertone SPORT SPF 100+ Sunscreen Lotion.

1           13. Defendant Merck & Co., Inc. is a Delaware corporation headquartered at  
2 One Merck Drive, Whitehouse Station, New Jersey 08889. From its headquarters in New  
3 Jersey, Merck & Co., Inc. manufactures, distributes, markets and/or sells the Coppertone  
4 SPF 55-100+ collection to consumers nationwide and created the superior UVB protection  
5 claims, which it caused to be disseminated to consumers nationwide.

6           14. Defendant MSD Consumer Care Inc. is a Delaware corporation with its  
7 principal place of business at 3030 Jackson Avenue, Memphis, Tennessee 38151. MSD  
8 Consumer Care Inc. is a wholly owned subsidiary of Merck & Co., Inc. From its principal  
9 place of business in Tennessee, MSD Consumer Care Inc. manufactures, distributes,  
10 markets and/or sells the Coppertone SPF 55-100+ collection to consumers nationwide and  
11 created the superior UVB protection claims, which it caused to be disseminated to  
12 consumers nationwide.

13           15. Defendant Merck Sharp & Dohme Corp. is a Delaware corporation  
14 headquartered at One Merck Drive, Whitehouse Station, New Jersey 08889. Merck Sharp  
15 & Dohme Corp. is a subsidiary of Merck & Co., Inc. From its headquarters in New  
16 Jersey, Merck Sharp & Dohme Corp. manufactures, distributes, markets and/or sells the  
17 Coppertone SPF 55-100+ collection to consumers nationwide and created the superior  
18 UVB protection claims, which it caused to be disseminated to consumers nationwide.

## 19                                   **FACTUAL ALLEGATIONS**

### 20           ***The Coppertone SPF 55-100+ Collection***

21           16. Merck distributes, markets and sells a variety of products for the skin, hair,  
22 and face. This lawsuit concerns the Coppertone SPF 55-100+ collection, a line of 16  
23 sunscreen products labeled with a SPF of 55 or greater. The Coppertone SPF 55-100+  
24 collection is sold online and at a variety of third-party retailers including Wal-Mart,  
25 Target, Walgreens and CVS.

26           17. Since launching the Coppertone SPF 55-100+ collection, Merck has  
27 consistently conveyed the message to consumers throughout the United States, including  
28



1 California, that the Coppertone SPF 55-100+ collection provides superior UVB protection  
2 compared to comparable lower SPF valued products, including the Coppertone SPF 50  
3 Products. They do not. Merck's superior UVB protection claims are false, misleading  
4 and deceptive.

5 18. There are only two material differences between the Products in the  
6 Coppertone SPF 55-100+ collection and the Coppertone SPF 50 Products: (1) the SPF  
7 values; and (2) the price. The Coppertone SPF 55-100+ collection retails for a premium  
8 over comparable lower SPF products, including the Coppertone SPF 50 Products. For  
9 example, the Coppertone SPORT SPF 100+ Sunscreen Lotion Plaintiff purchased  
10 contains all of the active ingredients and provides the same UVB protection as  
11 Coppertone SPORT SPF 50 Sunscreen Lotion. Yet, the Coppertone SPORT SPF 100+  
12 Sunscreen Lotion Plaintiff bought retails for at least a \$1.00 or more over the same size of  
13 the Coppertone SPORT SPF 50 Sunscreen Lotion product.

14 19. A sunscreen's SPF value is calculated by comparing the time needed for a  
15 person to burn unprotected with how long it takes for that person to burn wearing  
16 sunscreen. So a person who turns red after 20 minutes of unprotected sun exposure is  
17 theoretically protected 15 times longer if they adequately apply SPF 15. Importantly, the  
18 SPF rating system is non-linear. Also importantly, scientific studies establish that  
19 sunscreen products with SPF values over 50 provide no additional clinical benefit to  
20 consumers. SPF 100 blocks 99 percent of UV rays, while SPF 50 blocks 98 percent, an  
21 immaterial difference that yields no clinical benefit to consumers.

22 20. To stop the false sense of security high numbered SPF products create in the  
23 minds of consumers, in June 2011 the FDA proposed a regulation governing the labeling  
24 of sunscreen products that would cap SPF values at "SPF 50+." *See* 76 Fed. Reg. 35672.  
25 According to the FDA, there is insufficient data "to establish that products with SPF  
26 values higher than 50 provide additional clinical benefit over SPF 50 sunscreen products."  
27 *Id.* at 35673. In fact, scientific studies establish that there is no added clinical benefit  
28

1 associated with SPF values over 50. The FDA's proposed SPF 50+ rule harmonizes with  
 2 other countries, including Australia and the European Union, that have imposed similar  
 3 SPF labeling restrictions to reduce consumer confusion.

4 21. Merck's superior UVB protection claims are designed to take advantage of  
 5 health conscious consumers seeking protection from the damaging effects of unprotected  
 6 sun exposure as increasingly expressed by members of the medical community and  
 7 documented by the media. Each and every consumer who purchases a Product in the SPF  
 8 55-100+ collection is exposed to the 55, 70+, 75+, 80 or 100+ SPF values, which appear  
 9 prominently and conspicuously on the front and center of the Product label set-off from  
 10 the other representations. The front shots of the SPF 55-100+ collection labels appear as  
 11 follows:

12 **SPORT Continuous**  
 13 **Spray SPF 100+**



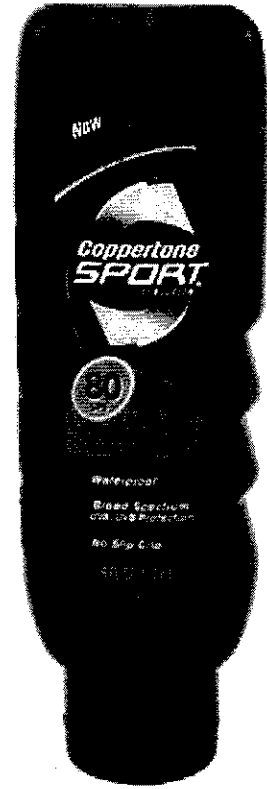
12 **SPORT Continuous**  
 13 **Spray SPF 70+**



12 **SPORT SPF 100+**  
 13 **Lotion**



12 **SPORT SPF 80**  
 13 **Lotion**



26  
27 //



**SPORT Stick SPF 55**



**ULTRAGUARD  
Continuous Spray  
SPF 70+**



**ULTRAGUARD  
100+ Lotion**



**ULTRAGUARD  
70+ Sunscreen  
Lotion**



**Oil Free SPF 75  
Foaming Lotion**



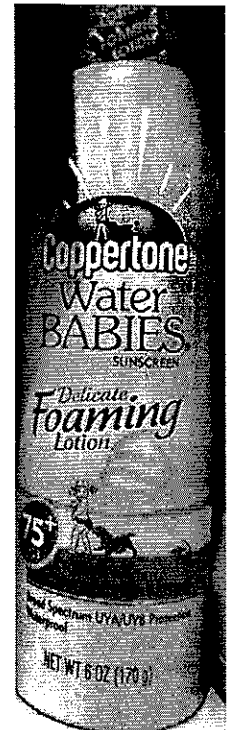
**Water BABIES SPF  
100+ Lotion**

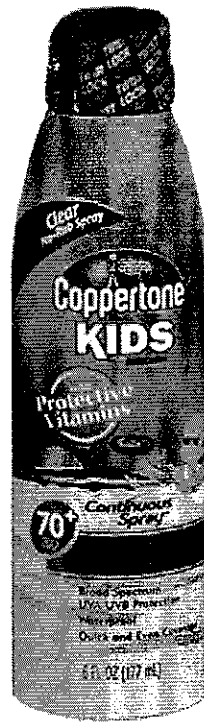
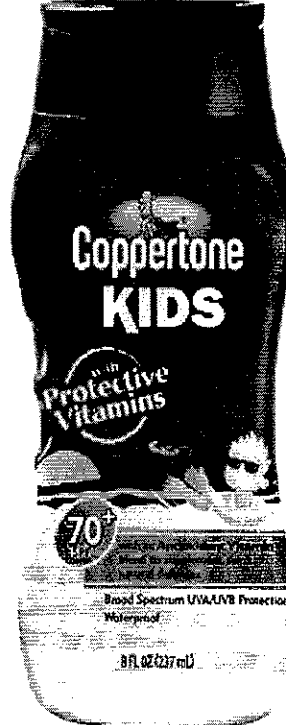


**Water BABIES  
SPF 70+ Lotion**



**Water BABIES  
Foaming Lotion  
SPF 75**



**Water BABIES Stick  
SPF 55****KIDS Continuous  
Spray SPF 70+****KIDS SPF 70+  
Sunscreen Lotion****KIDS Stick SPF 55**

### *The Impact of Merck's Wrongful Conduct*

22. Despite the scientific evidence that SPF values higher than 50 provide no additional clinical benefit, Merck continues to claim that the Coppertone SPF 55-100+ collection provides superior UVB protection and sells the Products for a price premium over comparable lower value SPF products, including the Coppertone SPF 50 Products.

23. As the distributor of the Coppertone SPF 55-100+ collection, Merck possesses specialized knowledge regarding the content and effects of the ingredients contained in its Products, and is in a superior position to learn of the effects – and has learned of the effects – its Products have on consumers.

24. Specifically, Merck knew or should have known, but failed to disclose that the Coppertone SPF 55-100+ collection does not provide superior UVB protection compared to less expensive, lower value SPF products, including the Coppertone SPF 50 Products.

1           25. Plaintiff and Class members have been and will continue to be deceived or  
 2 misled by Merck's deceptive superior UVB protection claims. Plaintiff purchased and  
 3 applied Coppertone SPORT SPF 100+ Sunscreen Lotion during the Class period and in  
 4 doing so, read and considered the Coppertone SPORT SPF 100+ Sunscreen Lotion label  
 5 and based her decision to buy and pay a premium for Coppertone SPORT SPF 100+  
 6 Sunscreen Lotion on the superior UVB protection claims. Merck's superior UVB  
 7 protection claims were a material factor in influencing Plaintiff's decision to purchase and  
 8 use Coppertone SPORT SPF 100+ Sunscreen Lotion. Plaintiff would not have purchased  
 9 Coppertone SPORT SPF 100+ Sunscreen Lotion had she known that the Product does not  
 10 provide the represented superior UVB protection.

11           26. As a result, Plaintiff and the Class members have been damaged by their  
 12 purchases of the Coppertone SPF 55-100+ collection and have been deceived into  
 13 purchasing Products that they believed, based on Merck's representations, provide  
 14 superior UVB protection compared to less expensive, comparable lower valued SPF  
 15 products, including the Coppertone SPF 50 Products, when, in fact, they do not.

16           27. Merck has reaped enormous profits from its false marketing and sale of the  
 17 Coppertone SPF 55-100+ collection.

#### 18                           **CLASS DEFINITION AND ALLEGATIONS**

19           28. Plaintiff brings this action on behalf of herself and all other similarly  
 20 situated Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of  
 21 Civil Procedure and seeks certification of the following Class against Merck for violations  
 22 of California state laws and/or similar laws in other states:

##### 23                           **Multi-State Class Action**

24           All consumers who purchased a Product in the Coppertone  
 25 SPF 55-100+ collection, within the applicable statute of  
 26 limitations, in the United States for personal use until the date  
 27 notice is disseminated.  
 28

Excluded from this Class are Merck and its officers, directors and employees, and those who purchased a Product in the Coppertone SPF 55-100+ collection for the purpose of resale.

29. In the alternative, Plaintiff brings this action on behalf of herself and all other similarly situated California consumers pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

**California-Only Class Action**

All California consumers who purchased a Product in the Coppertone SPF 55-100+ collection, within the applicable statute of limitations, for personal use until the date notice is disseminated.

Excluded from this Class are Merck and its officers, directors and employees and those who purchased a Product in the Coppertone SPF 55-100+collection for the purpose of resale.

30. ***Numerosity.*** The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of the Coppertone SPF 55-100+ collection who have been damaged by Merck's conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

31. ***Existence and Predominance of Common Questions of Law and Fact.*** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (a) whether the claims discussed above are true, or are misleading, or objectively reasonably likely to deceive;
- (b) whether Merck's alleged conduct violates public policy;
- (c) whether the alleged conduct constitutes violations of the laws asserted;
- (d) whether Merck engaged in false or misleading advertising;

1 (e) whether Plaintiff and Class members have sustained monetary loss  
2 and the proper measure of that loss; and

3 (f) whether Plaintiff and Class members are entitled to other appropriate  
4 remedies, including corrective advertising and injunctive relief.

5 32. **Typicality.** Plaintiff's claims are typical of the claims of the members of the  
6 Class because, *inter alia*, all Class members were injured through the uniform misconduct  
7 described above and were subject to Merck's deceptive superior UVB protection claims  
8 that accompanied each and every Product in the Coppertone SPF 55-100+ collection.  
9 Plaintiff is advancing the same claims and legal theories on behalf of herself and all  
10 members of the Class.

11 33. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the  
12 interests of the members of the Class. Plaintiff has retained counsel experienced in  
13 complex consumer class action litigation, and Plaintiff intends to prosecute this action  
14 vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

15 34. **Superiority.** A class action is superior to all other available means for the  
16 fair and efficient adjudication of this controversy. The damages or other financial  
17 detriment suffered by individual Class members is relatively small compared to the  
18 burden and expense that would be entailed by individual litigation of their claims against  
19 Merck. It would thus be virtually impossible for Plaintiff and Class members, on an  
20 individual basis, to obtain effective redress for the wrongs done to them. Furthermore,  
21 even if Class members could afford such individualized litigation, the court system could  
22 not. Individualized litigation would create the danger of inconsistent or contradictory  
23 judgments arising from the same set of facts. Individualized litigation would also increase  
24 the delay and expense to all parties and the court system from the issues raised by this  
25 action. By contrast, the class action device provides the benefits of adjudication of these  
26 issues in a single proceeding, economies of scale, and comprehensive supervision by a  
27  
28



1 single court, and presents no unusual management difficulties under the circumstances  
2 here.

3 35. The Class also may be certified because Merck has acted or refused to act  
4 on grounds generally applicable to the Class thereby making appropriate final declaratory  
5 and/or injunctive relief with respect to the members of the Class as a whole.

6 36. Plaintiff seeks preliminary and permanent injunctive and equitable relief on  
7 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin  
8 and prevent Merck from engaging in the acts described, and requiring Merck to provide  
9 full restitution to Plaintiff and Class members.

10 37. Unless a Class is certified, Merck will retain monies received as a result of  
11 its conduct that were taken from Plaintiff and Class members. Unless a Class-wide  
12 injunction is issued, Merck will continue to commit the violations alleged, and the  
13 members of the Class and the general public will continue to be misled.

14 **COUNT I**

15 **Violation of Business & Professions Code §17200, et seq.**

16 38. Plaintiff repeats and re-alleges the allegations contained in the paragraphs  
17 above, as if fully set forth herein.

18 39. Plaintiff brings this claim individually and on behalf of the Class.

19 40. As alleged herein, Plaintiff has suffered injury in fact and lost money or  
20 property as a result of Merck's conduct because she purchased a Product from the  
21 Coppertone SPF 55-100+ collection in reliance on Merck's superior UVB protection  
22 claims, but did not receive a Product that provides superior UVB protection as compared  
23 to less expensive, comparable lower valued SPF products, including the Coppertone SPF  
24 50 Products.

25 41. The Unfair Competition Law, Business & Professions Code §17200, et seq.  
26 ("UCL"), and similar laws in other states, prohibits any "unlawful," "fraudulent" or  
27 "unfair" business act or practice and any false or misleading advertising. In the course of  
28



1 conducting business, Merck committed unlawful business practices by, *inter alia*, making  
2 the superior UVB protection claims (which also constitutes advertising within the  
3 meaning of §17200) and omissions of material facts, as set forth more fully herein, and  
4 violating Civil Code §§1572, 1573, 1709, 1711, 1770 and Business & Professions Code  
5 §§17200, et seq., 17500, et seq., and the common law.

6 42. Plaintiff and the Class reserve the right to allege other violations of law,  
7 which constitute other unlawful business acts or practices. Such conduct is ongoing and  
8 continues to this date.

9 43. Merck's actions also constitute "unfair" business acts or practices because,  
10 as alleged above, *inter alia*, Merck engaged in false advertising, misrepresented and  
11 omitted material facts regarding the Coppertone SPF 55-100+ collection, and thereby  
12 offended an established public policy, and engaged in immoral, unethical, oppressive, and  
13 unscrupulous activities that are substantially injurious to consumers.

14 44. As stated in this Complaint, Plaintiff alleges violations of consumer  
15 protection, unfair competition and truth in advertising laws in California and other states,  
16 resulting in harm to consumers. Merck's acts and omissions also violate and offend the  
17 public policy against engaging in false and misleading advertising, unfair competition and  
18 deceptive conduct towards consumers. This conduct constitutes violations of the unfair  
19 prong of Business & Professions Code §17200, et seq.

20 45. There were reasonably available alternatives to further Merck's legitimate  
21 business interests, other than the conduct described herein.

22 46. Business & Professions Code §17200, et seq. also prohibits any "fraudulent  
23 business act or practice."

24 47. Merck's actions, claims, nondisclosures and misleading statements, as more  
25 fully set forth above, were also false, misleading and/or likely to deceive the consuming  
26 public within the meaning of Business & Professions Code §17200, et seq.

1           48. Plaintiff and other members of the Class have in fact been deceived as a  
 2 result of their reliance on Merck's material representations and omissions, which are  
 3 described above. This reliance has caused harm to Plaintiff and other members of the  
 4 Class who each purchased a Product from the Coppertone SPF 55-100+ collection.  
 5 Plaintiff and the other Class members have suffered injury in fact and lost money as a  
 6 result of these unlawful, unfair, and fraudulent practices.

7           49. As a result of its deception, Merck has been able to reap unjust revenue and  
 8 profit.

9           50. Unless restrained and enjoined, Merck will continue to engage in the above-  
 10 described conduct. Accordingly, injunctive relief is appropriate.

11           51. Plaintiff, on behalf of herself, all others similarly situated, and the general  
 12 public, seeks restitution and disgorgement of all money obtained from Plaintiff and the  
 13 members of the Class collected as a result of unfair competition, an injunction prohibiting  
 14 Merck from continuing such practices, corrective advertising and all other relief this Court  
 15 deems appropriate, consistent with Business & Professions Code §17203.

16  
 17                                   **COUNT II**  
 18                                   **Violations of the Consumers Legal Remedies Act –**  
 19                                   **Civil Code §1750 *et seq.***

20           52. Plaintiff repeats and re-alleges the allegations contained in the paragraphs  
 21 above, as if fully set forth herein.

22           53. Plaintiff brings this claim individually and on behalf of the Class.

23           54. This cause of action is brought pursuant to the Consumers Legal Remedies  
 24 Act, California Civil Code §1750, *et seq.* (the "Act") and similar laws in other states.  
 25 Plaintiff is a "consumer" as defined by California Civil Code §1761(d). The Products in  
 26 the SPF 55-100+ collection are "goods" within the meaning of the Act.

27           55. Merck violated and continues to violate the Act by engaging in the  
 28 following practices proscribed by California Civil Code §1770(a) in transactions with

1 Plaintiff and the Class which were intended to result in, and did result in, the sale of the  
2 Coppertone SPF 55-100+ collection:

3 (5) Representing that [the Products] have . . . approval, characteristics, . . . uses  
4 [and] benefits . . . which [they do] not have . . . .

5 \* \* \*

6 (7) Representing that [the Products] are of a particular standard, quality or  
7 grade . . . if [they are] of another.

8 \* \* \*

9 (9) Advertising goods . . . with intent not to sell them as advertised.

10 \* \* \*

11 (16) Representing that [the Products have] been supplied in accordance with a  
12 previous representation when [they have] not.

13 56. Merck violated the Act by representing and failing to disclose material facts  
14 on the Coppertone SPF 55-100+ collection labeling and packaging and associated  
15 advertising, as described above, when it knew, or should have known, that the  
16 representations were false and misleading and that the omissions were of material facts it  
17 was obligated to disclose.

18 57. Pursuant to California Civil Code §1782(d), Plaintiff and the Class seek a  
19 Court order enjoining the above-described wrongful acts and practices of Merck and for  
20 restitution and disgorgement.

21 58. Pursuant to §1782 of the Act, Plaintiff notified Defendants in writing by  
22 certified mail of the particular violations of §1770 of the Act and demanded that  
23 Defendants rectify the problems associated with the actions detailed above and give notice  
24 to all affected consumers of Defendants' intent to so act. Copies of the letters are attached  
25 hereto as Exhibits A, B and C, respectively.

26 59. If Merck fails to rectify or agree to rectify the problems associated with the  
27 actions detailed above and give notice to all affected consumers within 30 days of the date  
28

1 of written notice pursuant to §1782 of the Act, Plaintiff will amend this Complaint to add  
2 claims for actual, punitive and statutory damages, as appropriate.

3 60. Merck's conduct is fraudulent, wanton and malicious.

4 61. Pursuant to §1780(d) of the Act, attached hereto as Exhibit D is the affidavit  
5 showing that this action has been commenced in the proper forum.

6  
7 **COUNT III**  
**Breach of Express Warranty**

8 62. Plaintiff repeats and re-alleges the allegations contained in the paragraphs  
9 above, as if fully set forth herein.

10 63. Plaintiff brings this claim individually and on behalf of the Class.

11 64. The Uniform Commercial Code section 2-313 provides that an affirmation  
12 of fact or promise, including a description of the goods, becomes part of the basis of the  
13 bargain and creates an express warranty that the goods shall conform to the promise and  
14 to the description.

15 65. At all times, California and other states have codified and adopted the  
16 provisions in the Uniform Commercial Code governing the express warranty of  
17 merchantability.

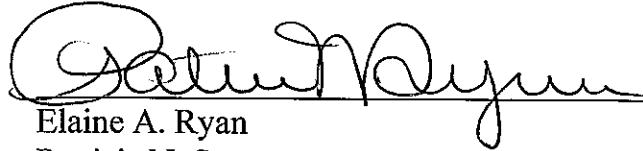
18 66. As discussed above, Merck expressly warranted on each and every Product  
19 label in the Coppertone SPF 55-100+ collection that the Products provide proportionally  
20 greater UVB protection than comparable, lower SPF valued products, including the  
21 Coppertone SPF 50 Products. The superior UVB protection claims made by Merck are  
22 affirmations of fact that became part of the basis of the bargain and created an express  
23 warranty that the goods would conform to the stated promise. Plaintiff placed importance  
24 on Merck's representations.

25 67. All conditions precedent to Merck's liability under this contract have been  
26 performed by Plaintiff and the Class.



1 Dated: September 19, 2012

2 BONNETT, FAIRBOURN, FRIEDMAN  
3 & BALINT, P.C.

4 

5 Elaine A. Ryan  
6 Patricia N. Syverson  
7 2325 E. Camelback Road, Suite 300  
8 Phoenix, AZ 85016  
9 [eryan@bffb.com](mailto:eryan@bffb.com)  
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16 San Diego, California 92101  
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18 Telephone: (619) 756-6978

19 Stewart M. Weltman (*Admitted Pro Hac Vice*)  
20 122 S. Michigan Avenue, Suite 1850  
21 Chicago, Illinois 60603  
22 Telephone: 312-427-3600  
23 Fax: 312-427-1850  
24 [sweltman@weltmanlawfirm.com](mailto:sweltman@weltmanlawfirm.com)  
25 (OF COUNSEL LEVIN FISHBEIN SEDRAN & BERMAN)

26 Attorneys for Plaintiff  
27  
28



# **EXHIBIT A**



**BONNETT FAIRBOURN  
FRIEDMAN & BALINT PC**

JERRY C. BONNETT<sup>1</sup>  
FRANCIS J. BALINT, JR.  
C. KEVIN DYKSTRA  
ANDREW Q. EVERROAD  
JONATHAN S. WALLACK  
CHRISTINA L. BANNON  
WILLIAM F. KING  
ANDREW M. EVANS  
KEVIN R. HANGER

WILLIAM G. FAIRBOURN  
VAN BUNCH<sup>2</sup>  
ELAINE A. RYAN<sup>3</sup>  
KATHRYN A. HONECKER<sup>4</sup>  
GUY A. HANSON  
MANFRED P. MUECKE<sup>5</sup>  
TONNA K. FARRAR<sup>6</sup>  
TY D. FRANKEL  
ERIC D. ZARD

ANDREW S. FRIEDMAN  
ROBERT J. SPURLOCK  
WENDY J. HARRISON<sup>2</sup>  
PATRICIA N. SYVERSON<sup>2</sup>  
KIMBERLY C. PAGE<sup>4</sup>  
TODD D. CARPENTER<sup>5</sup>  
T. BRENT JORDAN<sup>7</sup>  
LINDSEY M. GOMEZ-GRAY  
CHRISTINA M. VANDER WERF<sup>2</sup>

MICHAEL N. WIDENER, Of Counsel

<sup>1</sup>Admitted Also in Colorado  
<sup>2</sup>Admitted Also in California  
<sup>3</sup>Admitted Also in Illinois  
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<sup>6</sup>Admitted Only in California, Kansas, Missouri  
and Oregon (located in Oregon)  
<sup>7</sup>Admitted Only in Pennsylvania  
<sup>8</sup>Admitted Also in Colorado, Idaho, Kansas,  
Missouri, Texas, Utah and Washington  
<sup>9</sup>Admitted Also in Tennessee and West Virginia

September 19, 2012

**VIA CERTIFIED MAIL**  
**(RECEIPT NO. 7009 0080 0000 4081 7367)**

Merck Sharp & Dohme Corp.  
General Counsel  
One Merck Drive,  
Whitehouse Station, New Jersey 08889

Re: Doris Hernandez v. Merck & Co., Inc., et al.

Dear Sir or Madam:

Our law firm together with the Levin, Fishbein, Sedran & Berman law firm represent Doris Hernandez and all other consumers similarly situated in an action against Defendants Merck & Co., Inc., MSD Consumer Care, Inc., and Merck Sharp & Dohme Corp. (collectively, "Merck" or "Defendants"), arising out of, *inter alia*, misrepresentations, either express or implied, by Merck to consumers that your Coppertone SPF 55-100+ collection<sup>1</sup> provides greater

<sup>1</sup> The Coppertone SPF 55-100+ collection includes: (1) Coppertone SPORT Continuous Spray SPF 70+ Sunscreen; (2) Coppertone SPORT Continuous Spray SPF 100+ Sunscreen; (3) Coppertone SPORT SPF 80 Sunscreen Lotion; (4) Coppertone SPORT SPF 100+ Sunscreen Lotion; (5) Coppertone SPORT Stick SPF 55 Sunscreen; (6) Coppertone ultraGuard Continuous Spray SPF 70+ Sunscreen; (7) Coppertone ultraGuard SPF 70+ Sunscreen Lotion; (8) Coppertone ultraGuard SPF 100+ Sunscreen Lotion; (9) Coppertone-Oil Free SPF 75 Foaming Lotion; (10) Coppertone Water BABIES SPF 70+ Sunscreen Lotion; (11) Coppertone Water BABIES SPF 100+ Sunscreen Lotion; (12) Coppertone Water BABIES Foaming Lotion SPF 75 Sunscreen; (13) Coppertone Water BABIES Stick SPF 55 Sunscreen; (14) Coppertone KIDS Continuous Spray SPF 70+ Sunscreen; (15) Coppertone KIDS SPF 70+ Sunscreen Lotion; and (16) Coppertone KIDS Stick SPF 55 Sunscreen. Plaintiff reserves the right to include other products upon completion of discovery.

Merck Sharp & Dohme Corp.  
General Counsel  
September 19, 2012  
Page 2

sun protection than comparable, lower SPF valued products, including the Coppertone SPF 50 products.<sup>2</sup>

Ms. Hernandez and others similarly situated purchased Products in the SPF Coppertone 55-100+ collection unaware that Merck's SPF 55, 70+, 75, 80 or 100+ representations (the "superior UVB protection claims") are false. SPF 100 blocks 99 percent of UV rays, while SPF 50 blocks 98 percent, an immaterial difference that yields no clinical benefit to consumers. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Merck's superior UVB protection claims are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Merck with the intent to induce the consuming public to purchase the SPF 55-100+ collection. The superior UVB protection claims do not assist consumers; they simply mislead them.

Merck's superior UVB protection claims violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [the SPF 55-100+ collection has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

\* \* \*

- (7) Representing that [the SPF 55-100+ collection is] of a particular standard, quality or grade, . . . if [it is] of another.

\* \* \*

- (9) Advertising goods . . . with the intent not to sell them as advertised.

\* \* \*

---

<sup>2</sup> The Coppertone SPF 50 products include: (1) Coppertone SPORT PRO Series with DuraFlex Continuous Spray SPF 50 Sunscreen; (2) Coppertone SPORT Continuous Spray SPF 50 Sunscreen; (3) Coppertone SPORT SPF 50 Sunscreen Lotion; (4) Coppertone ultraGUARD Continuous Spray SPF 50 Sunscreen; (5) Coppertone ultraGUARD SPF 50 Sunscreen Lotion; (6) Coppertone Sensitive Skin Faces Lotion SPF 50 Sunscreen; (7) Coppertone Sensitive Skin SPF 50 Sunscreen Lotion; (8) Coppertone Water BABIES Pure & Simple Lotion SPF 50 Sunscreen; (9) Coppertone Water BABIES Lotion Spray SPF 50 Sunscreen; (10) Coppertone Water BABIES SPF 50 Sunscreen Lotion; (11) Coppertone KIDS Tear Free Lotion SPF 50 Sunscreen; and (12) Coppertone KIDS Continuous Spray SPF 50 Sunscreen.

Merck Sharp & Dohme Corp.  
General Counsel  
September 19, 2012  
Page 3

- (16) Representing that [the SPF 55-100+ collection has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Merck's superior UVB protection claims also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all others similarly situated that Merck immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Merck should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted breach of warranty theories, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Merck address these violations immediately.

Merck must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products;
2. Notify all such purchasers so identified that upon their request, Merck will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such Products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all the SPF 55-100+ collection purchasers who so request; and

Merck Sharp & Dohme Corp.

General Counsel

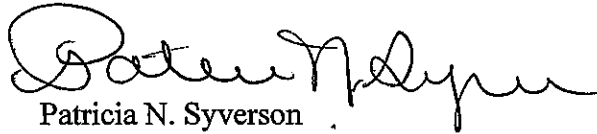
September 19, 2012

Page 4

4. Cease from expressly or impliedly representing to consumers that these Products provide greater sun protection than lower SPF valued products, including the Coppertone SPF 50 products, when there is no reasonable basis for so claiming, as more fully described in the enclosed Complaint.

We await your response.

Very truly yours,

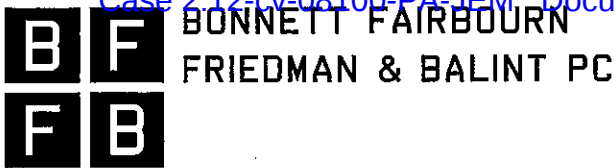
A handwritten signature in black ink, appearing to read "Patricia N. Syverson". The signature is fluid and cursive, with a large initial "P" and "S".

Patricia N. Syverson  
For the Firm

PNS:lmg  
Enclosures

# **EXHIBIT B**





JERRY C. BONNETT<sup>1</sup>  
FRANCIS J. BALENT, JR.  
C. KEVIN DYKSTRA  
ANDREW Q. EVERROAD  
JONATHAN S. WALLACK  
CHRISTINA L. BANNON  
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T. BRENT JORDAN<sup>2</sup>  
LINDSEY M. GOMEZ-GRAY  
CHRISTINA M. VANDER WERF<sup>2</sup>

MICHAEL N. WIDENER, Of Counsel

<sup>1</sup>Admitted Also in Colorado  
<sup>2</sup>Admitted Also in California  
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and Oregon (located in Oregon)  
<sup>7</sup>Admitted Only in Pennsylvania  
<sup>8</sup>Admitted Also in Colorado, Idaho, Kansas,  
Missouri, Texas, Utah and Washington  
<sup>9</sup>Admitted Also in Tennessee and West Virginia

September 19, 2012

**VIA CERTIFIED MAIL**  
**(RECEIPT NO. 7009 0080 0000 4081 7381)**

Merck & Co., Inc.  
General Counsel  
One Merck Drive,  
Whitehouse Station, New Jersey 08889

Re: Doris Hernandez v. Merck & Co., Inc., et al.

Dear Sir or Madam:

Our law firm together with the Levin, Fishbein, Sedran & Berman law firm represent Doris Hernandez and all other consumers similarly situated in an action against Defendants Merck & Co., Inc., MSD Consumer Care, Inc., and Merck Sharp & Dohme Corp. (collectively, "Merck" or "Defendants"), arising out of, *inter alia*, misrepresentations, either express or implied, by Merck to consumers that your Coppertone SPF 55-100+ collection<sup>1</sup> provides greater

<sup>1</sup> The Coppertone SPF 55-100+ collection includes: (1) Coppertone SPORT Continuous Spray SPF 70+ Sunscreen; (2) Coppertone SPORT Continuous Spray SPF 100+ Sunscreen; (3) Coppertone SPORT SPF 80 Sunscreen Lotion; (4) Coppertone SPORT SPF 100+ Sunscreen Lotion; (5) Coppertone SPORT Stick SPF 55 Sunscreen; (6) Coppertone ultraGuard Continuous Spray SPF 70+ Sunscreen; (7) Coppertone ultraGuard SPF 70+ Sunscreen Lotion; (8) Coppertone ultraGuard SPF 100+ Sunscreen Lotion; (9) Coppertone Oil Free SPF 75 Foaming Lotion; (10) Coppertone Water BABIES SPF 70+ Sunscreen Lotion; (11) Coppertone Water BABIES SPF 100+ Sunscreen Lotion; (12) Coppertone Water BABIES Foaming Lotion SPF 75 Sunscreen; (13) Coppertone Water BABIES Stick SPF 55 Sunscreen; (14) Coppertone KIDS Continuous Spray SPF 70+ Sunscreen; (15) Coppertone KIDS SPF 70+ Sunscreen Lotion; and (16) Coppertone KIDS Stick SPF 55 Sunscreen. Plaintiff reserves the right to include other products upon completion of discovery.

Merck & Co., Inc.  
General Counsel  
September 19, 2012  
Page 2

sun protection than comparable, lower SPF valued products, including the Coppertone SPF 50 products.<sup>2</sup>

Ms. Hernandez and others similarly situated purchased Products in the SPF Coppertone 55-100+ collection unaware that Merck's SPF 55, 70+, 75, 80 or 100+ representations (the "superior UVB protection claims") are false. SPF 100 blocks 99 percent of UV rays, while SPF 50 blocks 98 percent, an immaterial difference that yields no clinical benefit to consumers. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Merck's superior UVB protection claims are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Merck with the intent to induce the consuming public to purchase the SPF 55-100+ collection. The superior UVB protection claims do not assist consumers; they simply mislead them.

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- (5) Representing that [the SPF 55-100+ collection has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

\* \* \*

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\* \* \*

- (9) Advertising goods . . . with the intent not to sell them as advertised.

\* \* \*

---

<sup>2</sup> The Coppertone SPF 50 products include: (1) Coppertone SPORT PRO Series with DuraFlex Continuous Spray SPF 50 Sunscreen; (2) Coppertone SPORT Continuous Spray SPF 50 Sunscreen; (3) Coppertone SPORT SPF 50 Sunscreen Lotion; (4) Coppertone ultraGUARD Continuous Spray SPF 50 Sunscreen; (5) Coppertone ultraGUARD SPF 50 Sunscreen Lotion; (6) Coppertone Sensitive Skin Faces Lotion SPF 50 Sunscreen; (7) Coppertone Sensitive Skin SPF 50 Sunscreen Lotion; (8) Coppertone Water BABIES Pure & Simple Lotion SPF 50 Sunscreen; (9) Coppertone Water BABIES Lotion Spray SPF 50 Sunscreen; (10) Coppertone Water BABIES SPF 50 Sunscreen Lotion; (11) Coppertone KIDS Tear Free Lotion SPF 50 Sunscreen; and (12) Coppertone KIDS Continuous Spray SPF 50 Sunscreen.

Merck & Co., Inc.  
General Counsel  
September 19, 2012  
Page 3

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Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted breach of warranty theories, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Merck address these violations immediately.

Merck must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products;
2. Notify all such purchasers so identified that upon their request, Merck will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such Products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all the SPF 55-100+ collection purchasers who so request; and

Merck & Co., Inc.  
General Counsel  
September 19, 2012  
Page 4

4. Cease from expressly or impliedly representing to consumers that these Products provide greater sun protection than lower SPF valued products, including the Coppertone SPF 50 products, when there is no reasonable basis for so claiming, as more fully described in the enclosed Complaint.

We await your response.

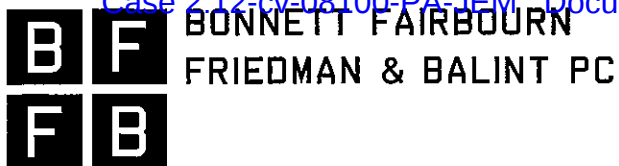
Very truly yours,

A handwritten signature in black ink, appearing to read "Patricia N. Syverson". The signature is fluid and cursive, with a large initial "P" and "S".

Patricia N. Syverson  
For the Firm

PNS:lmg  
Enclosures

# **EXHIBIT C**



JERRY C. BONNETT<sup>1</sup>  
 FRANCIS J. BALINT, JR.  
 C. KEVIN DYKSTRA  
 ANDREW Q. EVERROAD  
 JONATHAN S. WALLACK  
 CHRISTINA L. BANNON  
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 CHRISTINA M. VANDER WERF<sup>2</sup>

MICHAEL N. WIDENER, Of Counsel

<sup>1</sup>Admitted Also in Colorado  
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<sup>8</sup>Admitted Also in Colorado, Idaho, Kansas,  
 Missouri, Texas, Utah and Washington  
<sup>9</sup>Admitted Also in Tennessee and West Virginia

September 19, 2012

**VIA CERTIFIED MAIL**  
**(RECEIPT NO. 7009 0080 0000 4081 7374)**

MSD Consumer Care, Inc.  
 General Counsel  
 3030 Jackson Avenue,  
 Memphis, Tennessee 38151

Re: Doris Hernandez v. Merck & Co., Inc., et al.

Dear Sir or Madam:

Our law firm together with the Levin, Fishbein, Sedran & Berman law firm represent Doris Hernandez and all other consumers similarly situated in an action against Defendants Merck & Co., Inc., MSD Consumer Care, Inc., and Merck Sharp & Dohme Corp. (collectively, "Merck" or "Defendants"), arising out of, *inter alia*, misrepresentations, either express or implied, by Merck to consumers that your Coppertone SPF 55-100+ collection<sup>1</sup> provides greater

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MSD Consumer Care, Inc.  
General Counsel  
September 19, 2012  
Page 2

sun protection than comparable, lower SPF valued products, including the Coppertone SPF 50 products.<sup>2</sup>

Ms. Hernandez and others similarly situated purchased Products in the SPF Coppertone 55-100+ collection unaware that Merck's SPF 55, 70+, 75, 80 or 100+ representations (the "superior UVB protection claims") are false. SPF 100 blocks 99 percent of UV rays, while SPF 50 blocks 98 percent, an immaterial difference that yields no clinical benefit to consumers. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Merck's superior UVB protection claims are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Merck with the intent to induce the consuming public to purchase the SPF 55-100+ collection. The superior UVB protection claims do not assist consumers; they simply mislead them.

Merck's superior UVB protection claims violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [the SPF 55-100+ collection has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

\* \* \*

- (7) Representing that [the SPF 55-100+ collection is] of a particular standard, quality or grade, . . . if [it is] of another.

\* \* \*

- (9) Advertising goods . . . with the intent not to sell them as advertised.

\* \* \*

---

<sup>2</sup> The Coppertone SPF 50 products include: (1) Coppertone SPORT PRO Series with DuraFlex Continuous Spray SPF 50 Sunscreen; (2) Coppertone SPORT Continuous Spray SPF 50 Sunscreen; (3) Coppertone SPORT SPF 50 Sunscreen Lotion; (4) Coppertone ultraGUARD Continuous Spray SPF 50 Sunscreen; (5) Coppertone ultraGUARD SPF 50 Sunscreen Lotion; (6) Coppertone Sensitive Skin Faces Lotion SPF 50 Sunscreen; (7) Coppertone Sensitive Skin SPF 50 Sunscreen Lotion; (8) Coppertone Water BABIES Pure & Simple Lotion SPF 50 Sunscreen; (9) Coppertone Water BABIES Lotion Spray SPF 50 Sunscreen; (10) Coppertone Water BABIES SPF 50 Sunscreen Lotion; (11) Coppertone KIDS Tear Free Lotion SPF 50 Sunscreen; and (12) Coppertone KIDS Continuous Spray SPF 50 Sunscreen.

MSD Consumer Care, Inc.  
General Counsel  
September 19, 2012  
Page 3

- (16) Representing that [the SPF 55-100+ collection has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Merck's superior UVB protection claims also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all others similarly situated that Merck immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Merck should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted breach of warranty theories, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Merck address these violations immediately.

Merck must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products;
2. Notify all such purchasers so identified that upon their request, Merck will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such Products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all the SPF 55-100+ collection purchasers who so request; and

MSD Consumer Care, Inc.  
General Counsel  
September 19, 2012  
Page 4

4. Cease from expressly or impliedly representing to consumers that these Products provide greater sun protection than lower SPF valued products, including the Coppertone SPF 50 products, when there is no reasonable basis for so claiming, as more fully described in the enclosed Complaint.

We await your response.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patricia N. Syverson", written over a horizontal line.

Patricia N. Syverson  
For the Firm

PNS:lmg  
Enclosures

# **EXHIBIT D**

BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.  
ELAINE A. RYAN (*To be admitted Pro Hac Vice*)  
PATRICIA N. SYVERSON (203111)  
2325 E. Camelback Road, Suite 300  
Phoenix, AZ 85016  
[eryan@bffb.com](mailto:eryan@bffb.com)  
[psyverson@bffb.com](mailto:psyverson@bffb.com)  
Telephone: (602) 274-1100

BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.  
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San Diego, California 92101  
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Telephone: (619) 756-6978

STEWART M. WELTMAN  
122 S. Michigan Ave. Suite 1850  
Chicago, Illinois 60613  
(312) 427-3600  
[sweltman@weltmanlawfirm.com](mailto:sweltman@weltmanlawfirm.com)  
(OF COUNSEL LEVIN FISHBEIN SEDRAN & BERMAN)

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

DORIS HERNANDEZ, On Behalf of  
Herself and All Others Similarly Situated,

Plaintiff,

v.

MERCK & CO., INC, a Delaware  
corporation, MSD CONSUMER CARE  
INC., a Delaware corporation, MERCK  
SHARP & DOHME CORP., a New Jersey  
corporation

Defendants.

Case No.:

CLASS ACTION:

DECLARATION OF PATRICIA N.  
SYVERSON PURSUANT TO  
CALIFORNIA CIVIL CODE §1780(d)

1 I, Patricia N. Syverson, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the  
3 State of California. I am a shareholder of the law firm of Bonnett, Fairbourn, Friedman  
4 & Balint, P.C., the counsel of record for plaintiff in the above-entitled action.  
5

6 2. Defendants Merck & Co., Inc., MSD Consumer Care, Inc., and Merck  
7 Sharp & Dohme Corp. have done and are doing business in the Central District of  
8 California. Such business includes the distributing, marketing, labeling, packaging and  
9 sale of the Coppertone SPF 55-100+ collection.<sup>1</sup> Furthermore, Plaintiff Hernandez  
10 purchased a Product in the SPF 55-100+ collection in Burbank, California.  
11

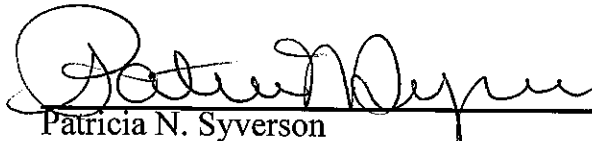
12 3. I declare under penalty of perjury under the laws of the State of  
13 California that the foregoing is true and correct.  
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23 <sup>1</sup> The Coppertone SPF 55-100+ collection includes: (1) Coppertone SPORT Continuous Spray  
24 SPF 70+ Sunscreen; (2) Coppertone SPORT Continuous Spray SPF 100+ Sunscreen; (3)  
25 Coppertone SPORT SPF 80 Sunscreen Lotion; (4) Coppertone SPORT SPF 100+ Sunscreen  
26 Lotion; (5) Coppertone SPORT Stick SPF 55 Sunscreen; (6) Coppertone ultraGuard  
27 Continuous Spray SFP 70+ Sunscreen; (7) Coppertone ultraGuard SPF 70+ Sunscreen Lotion;  
28 (8) Coppertone ultraGuard SPF 100+ Sunscreen Lotion; (9) Coppertone Oil Free SPF 75  
Foaming Lotion; (10) Coppertone Water BABIES SPF 70+ Sunscreen Lotion; (11)  
Coppertone Water BABIES SPF 100+ Sunscreen Lotion; (12) Coppertone Water BABIES  
Foaming Lotion SPF 75 Sunscreen; (13) Coppertone Water BABIES Stick SPF 55 Sunscreen;  
(14) Coppertone KIDS Continuous Spray SPF 70+ Sunscreen; (15) Coppertone KIDS SPF  
70+ Sunscreen Lotion; and (16) Coppertone KIDS Stick SPF 55 Sunscreen.

1 Executed this 19<sup>th</sup> day of September 2012, at Phoenix, Arizona.

2 BONNETT, FAIRBOURN, FRIEDMAN  
3 & BALINT, P.C.  
4 ELAINE A. RYAN  
5 PATRICIA N. SYVERSON (203111)

6 

7 Patricia N. Syverson  
8 2325 E. Camelback Road, Suite 300  
9 Phoenix, Arizona 85016  
10 Telephone: (602) 274-1100  
11 Facsimile: (602) 798-5860  
12 [eryan@bffb.com](mailto:eryan@bffb.com)  
13 [psyverson@bffb.com](mailto:psyverson@bffb.com)

14 Attorneys for Plaintiff  
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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Percy Anderson and the assigned discovery Magistrate Judge is John E. McDermott.

The case number on all documents filed with the Court should read as follows:

**CV12- 8100 PA (JEMx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.



BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.  
PATRICIA N. SYVERSON (203111)  
2325 E. Camelback Road, Suite 300  
Phoenix, AZ 85016  
Tel: 602-274-1100

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DORIS HERNANDEZ, On Behalf of Herself and All  
Others Similarly Situated,

PLAINTIFF(S)

v.

MERCK & CO., INC., a Delaware corporation, MSD  
CONSUMER CARE INC., a Delaware corporation,  
MERCK SHARP & DOHME CORP., a New Jersey  
corporation,

DEFENDANT(S).

CASE NUMBER

CV12-8100 PA(JEM)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney  
Patricia N. Syverson, whose address is:

BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.  
2325 E. Camelback Road, Suite 300  
Phoenix, AZ 85016

an answer to the ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim  
which is herewith served upon you within 21 days after service of this Summons upon you, exclusive  
of the day of service. If you fail to do so, judgement by default will be taken against you for the relief  
demanded in the complaint.

Clerk, U.S. District Court

Dated: SEP 19 2012

By: \_\_\_\_\_

MARILYN DAVIS

Deputy Clerk

(Seal of the Court)



**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

|  |  |   |  |
|--|--|---|--|
| <b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> )<br><br>DORIS HERNANDEZ, On Behalf of Herself and All Others Similarly Situated,<br><br><b>(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):</b><br>Los Angeles County, CA |  | <b>DEFENDANTS</b><br>MERCK & CO., INC., a Delaware corporation, MSD CONSUMER CARE INC., a Delaware corporation, MERCK SHARP & DOHME CORP., a New Jersey corporation,<br><br><b>County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):</b><br><br>Attorneys (If Known)<br>N/A |  |
| <b>(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)</b><br>PATRICIA N. SYVERSON (203111)<br>BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.<br>2325 E. Camelback Rd., Ste. 300, Phoenix, AZ 85016 (602-274-1100)                                       |  | Attorneys (If Known)<br>N/A   |  |

|  |   |   |  |  |         |                                       |                            |   |   |                          |   |   |  |   |   |                |   |
|--|---|---|--|--|---------|---------------------------------------|----------------------------|---|---|--------------------------|---|---|--|---|---|----------------|---|
| <b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)<br><br><input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)<br><br><input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) | <b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b><br>(Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:33%; border: none;">Citizen of This State</td> <td style="width:10%; border: none; text-align: center;">PTF DEF</td> <td style="width:33%; border: none;"></td> <td style="width:10%; border: none; text-align: center;">PTF DEF</td> </tr> <tr> <td style="border: none;"><input checked="" type="checkbox"/> 1</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 1</td> <td style="border: none;">Incorporated or Principal Place of Business in this State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table> | Citizen of This State   | PTF DEF  |  | PTF DEF | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |
| Citizen of This State  | PTF DEF   |   | PTF DEF  |  |         |                                       |                            |   |   |                          |   |   |  |   |   |                |   |
| <input checked="" type="checkbox"/> 1  | <input type="checkbox"/> 1  | Incorporated or Principal Place of Business in this State     | <input type="checkbox"/> 4 <input type="checkbox"/> 4            |  |         |                                       |                            |   |   |                          |   |   |  |   |   |                |   |
| Citizen of Another State   | <input type="checkbox"/> 2 <input type="checkbox"/> 2   | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 |  |         |                                       |                            |   |   |                          |   |   |  |   |   |                |   |
| Citizen or Subject of a Foreign Country  | <input type="checkbox"/> 3 <input type="checkbox"/> 3   | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6            |  |         |                                       |                            |   |   |                          |   |   |  |   |   |                |   |

**IV. ORIGIN** (Place an X in one box only.)

☒ 1 Original Proceeding   
 ☐ 2 Removed from State Court   
 ☐ 3 Remanded from Appellate Court   
 ☐ 4 Reinstated or Reopened   
 ☐ 5 Transferred from another district (specify):   
 ☐ 6 Multi-District Litigation   
 ☐ 7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes    ☐ No (Check "Yes" only if demanded in complaint.)

**CLASS ACTION** under F.R.C.P. 23: ☒ Yes    ☐ No    **MONEY DEMANDED IN COMPLAINT: \$** \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 Business and Professions Code §17200 et seq.; Violation of CLRA; and Breach of Express Warranty

**VII. NATURE OF SUIT** (Place an X in one box only.)

|  |  |  |   |   |   |
|--|--|--|---|---|---|
| <b>ADVERSITY</b><br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce/ICC Rates/etc.<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 810 Selective Service<br><input type="checkbox"/> 830 Securities/Commodities /Exchange<br><input type="checkbox"/> 875 Customer Challenge 12 USC 3410<br><input checked="" type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Act<br><input type="checkbox"/> 892 Economic Stabilization Act<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 894 Energy Allocation Act<br><input type="checkbox"/> 895 Freedom of Info. Act<br><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice<br><input type="checkbox"/> 950 Constitutionality of State Statutes | <b>CONTRACT</b><br><input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise<br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property | <b>TORTS</b><br><b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Fed. Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury-Med Malpractice<br><input type="checkbox"/> 365 Personal Injury-Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <b>PROPERTY</b><br><b>PERSONAL</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability<br><input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 444 Welfare<br><input type="checkbox"/> 445 American with Disabilities - Employment<br><input type="checkbox"/> 446 American with Disabilities - Other<br><input type="checkbox"/> 440 Other Civil Rights | <b>PERSONAL</b><br><b>PROPERTY</b><br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><input type="checkbox"/> 540 Mandamus/Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 610 Agriculture<br><input type="checkbox"/> 620 Other Food & Drug<br><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 630 Liquor Laws<br><input type="checkbox"/> 640 R.R. & Truck<br><input type="checkbox"/> 650 Airline Regs<br><input type="checkbox"/> 660 Occupational Safety/Health<br><input type="checkbox"/> 690 Other | <b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Mgmt. Relations<br><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act<br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark<br><input type="checkbox"/> 851 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 |
|--|--|--|---|---|---|

**VIII(a). IDENTICAL CASES:** Has this action been previously filed and dismissed, remanded or closed? ☒ No    ☐ Yes

If yes, list case number(s):

**FOR OFFICE USE ONLY:** Case Number: **CV12-8100**

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.**

**VIII(b). RELATED CASES:** Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

☒ Check here if the U.S. government, its agencies or employees is a named plaintiff.

Los Angeles County, CA

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

☒ Check here if the U.S. government, its agencies or employees is a named defendant.

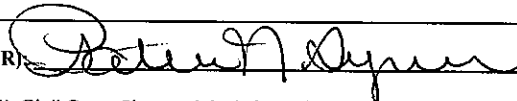
Merck & Co., Inc., a Delaware corporation; MSD Consumer Care, Inc., a Delaware corporation; and Merck Sharp & Dohme Corp., a New Jersey corporation

**List the California County, or State if other than California, in which **EACH** claim arose.** (Use an additional sheet if necessary)

**Note:** In land condemnation cases, use the location of the tract of land involved.

Los Angeles County, CA

**X. SIGNATURE OF ATTORNEY (OR PRO PER)**



**Date** September 19, 2012

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

**Key to Statistical codes relating to Social Security Cases:**

| Nature of Suit Code | Abbreviation | Substantive Statement of Cause of Action   |
|---------------------|--------------|--|
| 861                 | HIA          | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862                 | BL           | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)  |
| 863                 | DIWC         | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))   |
| 863                 | DIWW         | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))  |
| 864                 | SSID         | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.  |
| 865                 | RSI          | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))   |